

State of California
BOARD OF EQUALIZATION

CIGARETTE AND TOBACCO PRODUCTS TAX REGULATIONS

Regulation 4701. APPEAL - APPEALS DIVISION.

Reference: Sections 22974.7, 22978.7, 22979.7, Business and Professions Code.

(a) Request for Appeals Conference. The Request for Appeals Conference shall state the specific grounds upon which the licensee or unlicensed person is contesting the Warning Notice, Notice of Violation, or Notice of First Decision, and shall be accompanied by any and all documentation and written argument to be considered in the appeal. The Request for Appeals Conference shall be signed by the licensee or unlicensed person or by an authorized representative.

(b) Conference. Upon receipt of a Request for Appeals Conference, a conference will be scheduled and held as set forth in Regulation 5023, unless otherwise provided herein. The conference shall allow a licensee or unlicensed person an opportunity to show cause why the Warning Notice, Notice of Violation, or Notice of First Decision, and the penalty or penalties imposed therein, should not be upheld.

(1) The conference will be held by telephone and shall be recorded by the Appeals Division. A licensee or unlicensed person may request a copy or transcript of the recording, at his or her expense.

(2) The Appeals Division may grant a request to reschedule or postpone a conference. If a request is granted, the conference shall be rescheduled or postponed so that it can be held within 15 days of the date the conference was scheduled to be held prior to the granting of the request, unless the Chief Counsel or his or her designee approves of a later date.

(3) During a conference, the Appeals Division may grant a request for additional time to submit additional evidence. If such additional time is granted, the evidence shall be submitted to the Appeals Division no later than 7 days after the conference date.

(c) Decision. The Appeals Division shall issue a Notice of Second Decision following the conference. The Notice of Second Decision will set forth the Appeals Division's decision, the applicable penalty or penalties, and the licensee's or unlicensed person's appeal rights, if any, as set forth in subdivision (f) below.

(d) No later than 35 days after the Notice of Second Decision is issued, the Appeals Division may, in its sole discretion, issue a Notice of Second Decision – Reconsideration to correct any mistakes of law and/or facts.

(e) A Notice of Second Decision or Notice of Second Decision – Reconsideration that upholds a penalty of revocation and/or a fine of more than \$2,500 may be appealed by timely filing a Request for Board Hearing. A Notice of Second Decision or Notice of Second Decision – Reconsideration that upholds a penalty of suspension and/or a fine of \$2,500 or less is final and may not be appealed further.

(f) Failure to File. When applicable, a Request for Board Hearing must be filed within 10 days of the date the Notice of Second Decision is mailed or personally delivered to the licensee or unlicensed person. If a Request for a Board Hearing is not filed within the 10-day period, then the licensee or unlicensed person shall be deemed to have waived his or her right to an appeal and the Notice of Second Decision, and the penalty or penalties stated therein, shall become final. If a hearing is not requested or is waived, then official notice of the Board's action on the appeal will be mailed to the licensee or unlicensed person.

History: Adopted December 12, 2006, effective April 21, 2007.